No. 545

# In the Supreme Court

OF THE

# United States

OCTOBER TERM, 1942

GENERAL COMMITTEE OF ADJUSTMENT OF THE BROTHERHOOD OF LOCOMOTIVE ENGINEERS FOR THE PACIFIC LINES OF SOUTHERN PACIFIC COMPANY (an unincorporated association),

*Petitioner.*

vs.

SOUTHERN PACIFIC COMPANY (a corporation) and GENERAL GRIEVANCE COMMITTEE OF THE BROTHERHOOD OF LOCOMOTIVE FIREMEN AND ENGINEMEN (an unincorporated association).

## PETITION FOR A WRIT OF CERTIORARI to the United States Circuit Court of Appeals, Ninth Circuit and BRIEF IN SUPPORT THEREOF.

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SOUTHERN PACIFIC COMPANY (a corporation) and GENERAL GRIEVANCE COMMITTEE OF THE BROTHERHOOD OF LOCOMOTIVE FIREMEN AND ENGINEMEN (an unincorporated association).

## PETITION FOR WRIT.

*May it please the Court:*

The undersigned on behalf of General Committee of Adjustment of the Brotherhood of Locomotive Engineers for the Pacific Lines of Southern Pacific Company pray that a writ of certiorari issue to review the judgment of the United States Circuit Court of Appeals for the Ninth Circuit entered in the above-entitled cause, numbered therein No. 9991.

## OPINION BELOW.

The opinion of the court below (R. 792) is reported in 132 F. (2d) 194. There was no opinion in the District Court (Northern District of California).

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## JURISDICTION.

The judgment of the Circuit Court of Appeals was entered November 13, 1942 (R. 791). A petition for rehearing was seasonably made and entertained, and denied, with modification of opinion, on January 22, 1943 (R. 828-829).

The jurisdiction of this Court is invoked under Section 240(a) of the Judicial Code as amended by the Act of February 13, 1925 (28 U.S.C. § 347).

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## STATEMENT.

Respondent Southern Pacific Company is a "carrier" within the meaning of § 1, First, of the Railway Labor Act. (Findings 1 and 2, R. 44.)

The locomotive engineers in the carrier's employ comprise a separate "craft or class of employes" (Finding 4, R. 45) as that phrase is used in the Act, including its use in § 2, Fourth, viz.:

> "The majority of any craft or class of employes shall have the right to determine who shall be the representative of the craft or class for the purposes of this Act."

For many years before the passage of the Act and ever since petitioner General Committee of Adjustment (hereinafter called "Engineer's Brotherhood") has been the representative designated by the majority of the craft or class of locomotive engineers, and has collectively negotiated and entered into, with the carrier, agreements (hereinafter called "Engineer's Schedule") concerning rates of pay, rules and working conditions of the craft (Findings 4 and 5, R. 45 and 46; Engineer's Schedule printed at R. 326-467). Similarly, in respect to the separate craft of locomotive firemen, respondent General Grievance Committee (hereinafter called "Firemen's Brotherhood") is the majority representative thereof, and has concurrently had a collective agreement, hereinafter called "Firemen's Schedule". (Findings 4 and 5, R. 45, 46 and 47; Firemen's Schedule printed at R. 468-636.)

The memberships of the two brotherhoods overlap; most of the locomotive engineers are members of one Brotherhood or the other, some are members of both; and a few of neither (Finding 3, R. 45); i.e., Firemen's Brotherhood has in its membership a minority of the craft or class of locomotive engineers.

The last Firemen's Schedule collectively entered into by the craft of *firemen* with the carrier (R. 468-636), printed and published June 1, 1939, was the first Firemen's Schedule printed and published by Firemen's Brotherhood subsequent to the decision by this Court on March 29, 1937, of *Virginian Ry. Co. v. System Federation No. 40*, 300 U. S. 515. It contained the following Article (R. 6; Finding 5, R. 46-47; R. 468, at 616):

"Article 51

"Adjustment of Differences

"Sec. 1. The right of any **engineer**, fireman, hostler or hostler helper to have the regularly constituted committee of his organization represent him in the handling of his grievances, in accordance with the laws of his organization and under the recognized interpretation of the General Committee making the schedule, involved, is conceded. * * *"

The inclusion of the word "engineer" therein was the subject of protest by Engineer's Brotherhood to the carrier, R. 177, and the subject of controversy between the two Brotherhoods, R. 208. There was an actual controversy between petitioner Engineer's Brotherhood, on one side, and the carrier and Firemen's Brotherhood, on the other, as to the validity of that inclusion in Article 51, section 1, quoted supra (Finding 17, R. 54-55), forming the basis of the Engineer's complaint for declaratory relief (R. 2-13), praying a declaration of rights and legal relations and further relief. (R. 13.)

The Court below affirmed a declaration and decree (R. 55-57) of the District Court that the inclusion of the word "engineer" in Article 51, section 1, supra, in the Firemen's Schedule is valid.

Subsidiary thereto, the Court below affirmed a companion declaration and decree (Conclusion 2, R. 55; Decree 5, R. 56) that Firemen's Brotherhood (although designated by only a minority of the craft of engineers) "is not precluded by the Railway Labor Act, or otherwise" from handling individual grievance claims "arising out

of any engine employment, including employment as engineer", i.e., grievance claims arising and asserted under the Engineer's Schedule.

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## QUESTIONS PRESENTED

The questions presented are:

1. Is the inclusion of the word "engineer" in Article 51, section 1, of the Firemen's Schedule a violation of the exclusive right of petitioner Engineer's Brotherhood to represent the craft or class of locomotive engineers as the representative designated by the majority of that craft or class under the Railway Labor Act?

2. Has any representative other than petitioner Engineer's Brotherhood, designated by the majority of the craft, a right to present and represent grievance claims under the Act in the case of any individual member of the craft of locomotive engineers who desires to proceed through a representative in presenting and prosecuting a grievance claim under the adjustment machinery of the Act?

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## REASONS FOR GRANTING THE WRIT

1. The decision of the Court below deals with questions of great public importance, not merely with respect to labor relations on the line of the Southern Pacific, but nationwide, affecting employment on practically every line of railway; and not employment of engineers and firemen only, but employment in all organized crafts of railway employes.

2. The decision of the Court below conflicts in principle with the decision of this Court in *Virginian Ry. Co. v. System Federation No. 40*, 300 U. S. 515, wherein the principle is laid down (300 U. S. at 548) that the right of the majority representative of a craft is exclusive, and that the carrier is under a negative duty not to negotiate, "treat", with a minority union.

3. In the well-known case under the Wagner Act, *National Labor Relations Board v. Jones & Laughlin Steel Corp.*, 301 U. S. 1, this Court clearly pointed out that the "majority rule" provisions of the Wagner Act, § 9(a), came from the earlier provision in the Railway Labor Act, as amended in 1934. The exclusive right of the majority representative is identical under both Acts. The decision of the Court below therefore conflicts with (a) the nation-wide rule under the Wagner Act in non-railway employment, first applied in *Matter of Mooresville Cotton Mills*, 2 N.L.R.B. 952, 955 (and adhered to ever since by the Board, *Rosenfarb, National Labor Policy*, p. 195), i.e., that an employer may not negotiate with a minority representative of a minority member of a craft in respect to an individual grievance within the scope of the collective agreement governing the craft; and with (b) the approval of that ruling by the Circuit Court of Appeals for the Fourth Circuit in *Mooresville Cotton Mills v. National Labor Relations Board*, 94 F. (2d) 61, at 65, col. 1; and with (c) rulings in the State Courts: *Bloedel Donovan Lumber Mills v. International Woodworkers of America*, 4 Wash. (2d) 62, 72; *Dooley v. Lehigh Valley R. R. Co.*, 130 N. J. Eq. 75, affirmed in 131 N. J. Eq., 468, certiorari denied, October Term, 1942, No. 207 (87 L. Ed. 38), sub. nom. *Lehigh Valley R. Co. v. Dooley*.

Wherefore, it is respectfully submitted that this petition for writ of certiorari should be granted, to review those portions of the judgment of the Court below embraced within the Questions Presented, supra.

Dated, San Francisco, California,
March 17, 1943.

GEORGE M. NAUS,
*Attorney for Petitioner.*

CLARENCE E. WEISELL,
(HORN, WEISELL, MCLAUGHLIN & LYBARGER),
*Of Counsel.*

## BRIEF IN SUPPORT OF THE PETITION.

### OPINION BELOW.

Stated in the Petition, supra.

### JURISDICTION.

Stated in the Petition, supra.

### STATUTE INVOLVED.

The Railway Labor Act of May 20, 1926, as amended June 21, 1934, c. 691, 48 Stat. 1185, U. S. C. Title 45, §§ 151-163. Because of their length, we quote relevant portions in our Appendix hereto.

### SPECIFICATION OF ERRORS TO BE URGED.

The Circuit Court of Appeals erred (in that branch of the decision under the Court's heading "A", R. 793 to 815):

(1) In holding that the inclusion of the word "engineer" in Article 51, section 1, of the Firemen's Schedule does not violate the exclusive right of petitioner Engineer's Brotherhood to represent the craft or class of locomotive engineers, as the representative designated by the majority of that craft or class under the Railway Labor Act.

(2) In holding that an individual member of the craft who elects to prosecute an individual grievance claim

under the adjustment machinery of the Railway Labor Act, through a representative, may do so through a representative not designated by the majority of the craft.

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## ARGUMENT.

### 1. THE CIRCUIT COURT OF APPEALS ERRED IN HOLDING THAT THE INCLUSION OF THE WORD "ENGINEER" IN ARTICLE 51, SECTION 1, OF THE FIREMEN'S SCHEDULE DOES NOT VIOLATE THE EXCLUSIVE RIGHT OF PETITIONER ENGINEER'S BROTHERHOOD TO REPRESENT THE CRAFT OR CLASS OF LOCOMOTIVE ENGINEERS, AS THE REPRESENTATIVE DESIGNATED BY THE MAJORITY OF THAT CRAFT OR CLASS UNDER THE RAILWAY LABOR ACT.

The effect of the inclusion of the word "engineer" in the Firemen's Schedule, Article 51, section 1, "Adjustment of Differences", is that the carrier and a minority brotherhood have collectively contracted with respect to the craft or class of locomotive engineers in violation of the exclusive right of petitioner, the representative designated by the majority of the craft. This Court held in *Virginian Railway Co. v. System Federation*, 300 U. S. 515, 548, that the provisions of the Railway Labor Act giving to the employees the right to organize and bargain collectively through the representative of their own selection gave an exclusive right to the majority of the craft, and imposed the affirmative duty upon the carrier to treat only with the true representative of the craft and hence the negative duty to treat with no other. It appears that the Court below turned decision upon a misconception of the ruling of this Court in the *Virginian Railway Co.* case concerning the matter of individual hirings. The decree in the *Virginian Railway* case as construed by this Court

was said not to preclude "such individual contracts as [the carrier] may elect to make directly with individual employees". (300 U. S., at 549.) Hirings of craft members are individual on all railroads, and when there is no craft schedule the carrier and the individual member may embrace in the contract of hiring any terms whatever as to rates of pay, rules and working conditions, or they may be governed by unilateral announcement by the carrier. (Accord, *Williams v. Jacksonville Terminal Co.*, 315 U. S., at 386, 402.) Whether a genuine collective contract existed in the *Virginian Railway* case, the purported contract having been made with a company-union, is at least open to question. We submit that the statements in the *Virginian Railway Co.* case concerning individual contracts are not to be construed to mean that where there is a true collective contract governing rates of pay, rules and working conditions of the craft, the carrier may also make individual contracts of hire with its employees on terms different from those contained in the collective agreement.

But whatever was said by this Court in the *Virginian Railway* case about individual contracts can lend no support to the inclusion of the word "engineer" in the Firemen's Schedule, because that Schedule is not a contract between the carrier and an *individual* but between the carrier and a minority representative collectively representing a small minority of engineers. The decree in that case directed the carrier to "treat with" the true representative of the majority of the craft and not to treat with a representative other than the true one, and enjoined it from entering into any collective agreement with a representative other than the respondent, the true representative. The case is, accordingly, direct authority

for striking the word "engineer" from the Firemen's Schedule because, equally with the *Virginian Railway* case, the record here discloses that the Firemen's Brotherhood is *not* the true representative of the craft of engineers.

The question of who may be the representative of employes "is and always has been one of the most important of the rules and working conditions in the operation of a railroad", *Pennsylvania R. R. Co. v. U. S. R. R. Labor Board*, 261 U. S. 72, 83.

Under the Act, § 2, Fourth, the majority of the craft may designate the exclusive representative of the craft; and in § 2, Eighth, it is provided that the provisions of § 2, Third, Fourth and Fifth "are hereby made a part of the contract of employment between the carrier and each employee, and shall be held binding upon the parties, regardless of any other express or implied agreements between them". Majority rule therefore becomes a part of each individual hiring, and accordingly the Congress in the exertion of its power over commerce has forbidden the carrier and minority representative Firemen's Brotherhood from contracting about "engineers". We find utterly inexplicable the astonishing assertion (R. 796) in the opinion of the Court below, viz.:

> "Under the decision of Virginian Railway Co. v. System Federation, supra, the engineer could have made an employment agreement with the Railway that he was to have the same rates of pay as those of the schedule of a British railway."

**2. THE CIRCUIT COURT OF APPEALS ERRED IN HOLDING THAT AN INDIVIDUAL MEMBER OF THE CRAFT WHO ELECTS TO PROSECUTE AN INDIVIDUAL GRIEVANCE CLAIM UNDER THE ADJUSTMENT MACHINERY OF THE RAILWAY LABOR ACT, THROUGH A REPRESENTATIVE, MAY DO SO THROUGH A REPRESENTATIVE NOT DESIGNATED BY THE MAJORITY OF THE CRAFT.**

A. We may assume that the individual engineer may alone decide whether a claim is to be asserted, i. e., that he may waive his individual claim or grievance if he wills, *Illinois Central R. Co. v. Moore*, 5 Cir., 112 F. (2d) 959, 965.

We may further assume that use of the adjustment machinery of the Railway Labor Act is voluntary, not compulsory, i. e., that it is always open to the individual engineer to elect instead to bring suit in a Court as a party plaintiff in complete control of his own suit, *Moore v. Illinois Central R. Co.*, 312 U. S. 630, 634-636.

We may further assume that the individual engineer, through any representative he may individually select, may handle an individual claim or grievance as to any matter outside the statutory scope of the collective agreement or Engineer's Schedule, which scope under § 2, First, and § 3, First, (i) embraces "agreements concerning rates of pay, rules, and working conditions". Illustrations are found in personal injury caused by an unsafe place to work or negligence of the carrier, matters of statutory duty and the like.

We may leave open, as was done in *Bloedel Donovan Lumber Mills v. International Woodworkers of America*, 4 Wash. (2d) 62, 72, the question whether the individual

engineer may, without the use of any representative, personally handle his own case.

We come, then, to our narrowed contention, and it is this: Since the locomotive engineers comprise a separate craft or class of employees, within the meaning of the Railway Labor Act, and since the majority of that craft or class have designated Engineer's Brotherhood as the representative of the craft or class for the purposes of the Act, § 2, Third, and Fourth (second sentence), it follows that when members of the craft voluntarily elect to use the procedural machinery provided by § 3, First (National Railroad Adjustment Board) for the adjustment of individual claims or grievances that develop from the interpretation or application of the collective agreement between the carrier and Engineer's Brotherhood, the latter is the sole and exclusive representative of the members of the craft, and minority members of the craft who elect to take the adjustment benefits of the Act must take the benefits *cum onere;* therefore they may not use Firemen's Brotherhood nor any other minority *representative* in the pursuit of an adjustment under the machinery of the Act.

The body of decided cases while small is uniformly to the effect that a minority craft member complaining of an individual grievance within the scope of the collective agreement governing the craft may not be represented as to such a grievance by a minority representative such as Firemen's Brotherhood here: *Matter of Mooresville Cotton Mills*, 2 N. L. R. B. 952, 955; *Mooresville Cotton Mills v. N. L. R. B.*, 4 Cir., 94 F. (2d) 61; *Bloedel Donovan Lumber Mills v. International Woodworkers of America*, 4 Wash.

(2d) 62, 72; *Dooley v. Lehigh Valley R. R. Co.*, 130 N. J. Eq. 75, affirmed in 131 N. J. Eq. 468, cert. den. (87 L. Ed. 38).

Since the decision of the Court below, the Attorney General, Honorable Francis Biddle, on December 29, 1942, gave a written opinion to the President, under the Railway Labor Act, wherein it was stated inter alia:

> "it is as important that there be collective action on the part of employees in the negotiation of settlements of grievances as it is that there be collective action in the negotiation of the provisions of the collective bargaining agreement which relate to wages, hours, and other conditions of employment. Disputes about grievances normally require interpretations of these latter provisions. Even when this is not the case, all members of the class or craft to which an aggrieved employee belongs have a real and legitimate interest in the dispute. Each of them, at some later time, may be involved in a similar dispute."

We adopt that statement as argument here.

There are impelling reasons why the representation of grievances involving claims under a schedule may be lodged exclusively with the representative who has made the schedule agreement. Representation of such grievances is clearly within the purview of the Act. Representation by a representative other than the one who makes and interprets the schedule tends to circumvent, frustrate, or defeat the proper settlement of such grievances and the maintenance and enforcement of the schedule negotiated by the majority, and thereby to defeat the purposes of the Act. It opens wide the door to an employer

to indulge in disproportionate treatment, favoritism and discrimination (cf. as to an organized group and an unorganized remainder within a craft or class, *N. L. R. B. v. Wilson Line*, 122 F. (2d) 809, 812, col. 2).

Each decision upon a claim arising under a schedule has an effect upon the interpretation or application of the schedule. By § 3, First, (m), awards of the Adjustment Board must be in writing, and "the awards shall be final and binding upon both parties to the dispute, except in so far as they shall contain a money award". The decisions upon prior analogous claims amount to what may be called the "common law" of schedule interpretation. Such decisions are cited and argued by the representative and manifestly carry much weight in the application of the schedule to a pending claim.*

It is therefore of great importance to the craft representative that it shall have the right to handle all claims (where representation is desired) which thus affect the application and enforcement of the schedule. A minority representative, under the decision of the Court below, may interpret the schedule contrary to the interpretation of

*The National Railroad Adjustment Board has repeatedly recognized this fact. In the following illustrative decisions of the National Railroad Adjustment Board, First Division, the awards were based upon the following findings:

Award No. 534. "The settlements made under the rules involved support of the employees' contention."

Award No. 571. "Under settlements on this property claim is supported."

Award No. 837. "On the basis of previous settlements by the carrier in connection with the rule in question, the employees' contention in this particular case is supported."

Award No. 4992. "The prior settlements on this railroad, involving similar claims, warrant an affirmative award."

the craft representative, and settle a case in conformity with such unrecognized interpretation. An illustration of this practice is shown by Exhibit 11 (R. 311), where the Firemen's Brotherhood compromised a claim for one-half of the amount appearing due under the Engineer's Schedule. A compromise by which a claim is settled for one-half of its value is not a settlement in accordance with the "recognized interpretation" of the Engineer's Schedule. Such a practice plainly undermines the enforcement of the schedule; it tends to destroy the "recognized interpretation" by making an exception to it; it violates the Engineer's Schedule rule, Article 32, Section 22 (R. 452), that the controversy "will be handled in accordance with the recognized interpretation"; and it undercuts the authority of the craft representative to interpret and enforce its own rule. To accede to the right of a minority representative to make such settlements in one case is to concede it in all cases, with the result that many or all cases might be so compromised by a minority. If the carrier finds that it can settle claims on a more favorable basis with the minority representative than with the craft representative, as in the instance illustrated by Exhibit 11 (R. 311), it will naturally make known its preference for dealing with the former. It will thus play one organization against the other, and one interpretation against another. Concessions made by the minority representative will call for concessions by the craft representative, and thus a premium will be placed upon compromise rather than upon strict enforcement. Thereby the full benefits of the schedule are frittered away and lost to the craft.

There is no more room for dual representation in the presentation of grievances arising under a schedule than

there is for "pluralism" in the making of a schedule. If such dual representation is permitted, there will be constantly recurring disputes, and the Act will fail of its purpose as "an instrument of peace rather than of strife". (*T. & N. O. R. Co. v. Ry. Clerks*, 281 U. S. 548, 570.) The whole purpose and intent of the statute is to settle such controversies in the selection of the craft representative and thereafter to constitute this representative as the sole spokesman and bargaining agent of the craft.

B. Findings 7 and 8 about a "usual manner" of handling "individual claims and grievance cases" is in reality but a misplaced and erroneous legal opinion that endeavors to disregard the dominant purposes of the Act and place an insupportable weight upon the phrase, "the usual manner", in § 3 First, (i), which we quote:

> "The disputes between an employee or group of employees and a carrier or carriers growing out of grievances or out of the interpretation or application of agreements concerning rates of pay; rules, or working conditions * * * shall be handled in the usual manner up to and including the chief operating officer of the carrier designated to handle such disputes; but, failing to reach an adjustment in this manner, the disputes may be referred by petition of the parties or by either party to the appropriate division of the Adjustment Board with a full statement of the facts and all supporting data bearing upon the disputes."

The history and purpose of the provision are clear:

> "The purpose of this salutary provision is to require the parties, before seeking the assistance of the

government, to exhaust their own resources in an attempt to settle labor disputes."

*Spencer, The National Railroad Adjustment Board* (Studies in Business Administration, Univ. Chicago, April 1938).

"Throughout its career the [Railroad Labor] Board [under the Transportation Act of 1920, 45 U. S. C. A. § 135] held steadfastly to this rule and refused to entertain any application for a hearing until this procedure has been complied with."

*Wolf, The Railroad Labor Board* (University of Chicago Press, 1927), p. 351.

There must be an exhaustion of negotiating effort to settle disputes, i. e., they "shall be handled in the usual *manner* up to and including the chief operating officer of the carrier". "Manner" merely relates to method of exhaustion.

The phrase, "handled in the usual manner", was originated in the United States Railroad Administration of 1918 and 1919. Prior thereto, under private control of railroads, the chief operating officer on each railroad had the last word upon individual grievances and disputes unless a strike was called. His decision was a final decision. That finality of decision was taken away when the Government took control of the railroads, under the Director General's General Order No. 8, which ordered *inter alia*:

"Matters of controversy arising under interpretations of existing wage agreements and other matters not relating to wages and hours will take their usual course, and in the event of inability to reach a settlement will be referred to the Director General."

Appellate machinery for review of the chief operating officer's decision was needed. On March 22, 1918, bipartisan Railway Board of Adjustment No. 1 was created by General Order No. 13, covering the four engine and train service Brotherhoods. In giving appellate jurisdiction from decisions of chief operating officers on particular railroads, the following language was used therein *inter alia:*

> "10. Personal grievances or controversies arising under interpretation of wage agreements, and all other disputes arising between officials of a railroad and its employes, covered by this understanding will be handled in their usual manner by general committees of the employes up to and including the chief operating officer of the railroad * * *."

Under identical texts, General Orders 29 and 53 created Boards Nos. 2 and 3 for other of the organized crafts that held schedules or collective agreements. There was a residue of employes in crafts either unorganized or holding no collective agreement. They were covered by the Division of Labor's Circular No. 3 of August 30, 1918. As to them, it was provided *inter alia* that grievances or controversies "will be handled in the usual manner by the individual, his representative, or by committees of employes, up to and including the chief operating officer of the railroad", before right of appeal to the Division of Labor.

Thereafter, the Director General promulgated General Order No. 65, reading:

> "Grievances affecting employees belonging to classes which are or will be included in national agree-

ments which have been, or may be, made between the United States Railroad Administration and employees' organizations will be handled as follows:

(a) Grievances on railroads not having agreements with employees, which grievances occurred prior to the effective date of any national agreement, will be handled by railroad officials in the usual manner with the committees and officials of the organizations affected, for final reference to the Director of Labor as provided in Circular No. 3 of the Division of Labor. Grievances on railroads having agreements with employees, which grievances occurred prior to the effective date of any national agreement, will be handled by railroad officials in the usual manner with the committees and officials of the organizations with which the agreement was made, for final reference to Railway Boards of Adjustment, as provided in general orders creating such Boards. Decisions made as the result of such reference will apply to the period antedating the effective date of such national agreement and from the effective date of that agreement will be subject to any changes that are brought about by the national agreement.

(b) Grievances which occurred on the effective date of any national agreement, and subsequent thereto, will be handled by the committees of the organizations signatory to such national agreements, for final reference to the appropriate Railway Board of Adjustment, except on roads where other organizations of employees have an agreement with the management for the same class of employees, in which case grievances will be handled under that agreement by the committees of the organization which holds the agreement, for final reference to the Director of Labor as provided in Circular No. 3 of the Division of Labor."

From the foregoing history it is clear that the phrase "usual manner" relates solely to method, not to persons. It is addressed solely to exhaustion of intramural negotiating effort on the particular railroad, before an adjustment appeal "off the property". It does not identify who, for the employes, shall negotiate. Until the adoption of majority rule, the employer could negotiate with any and all groups, majority and minority. However, the 1934 Act had different sponsorship (Federal Coordinator of Transportation), and majority rule became the law. Majority representation means exclusive representation. There must still be handling in the "usual manner", i. e., exhaustion of negotiating effort on the particular railroad, through the hierarchy of carrier officers up to the chief operating officer. That handling in the "usual manner" must be, since 1934, by the majority representative of the craft, the exclusive representative. In its origin in General Order No. 13 creating Railway Board of Adjustment No. 1 for the train service crafts (engineers, firemen, conductors, brakemen) the phrase "handled in the usual manner" was immediately followed by the words, "by general committees". Repetition occurred in General Orders 29 and 53 creating Boards No. 2 (shop and mechanical) and No. 3 (telegraphers, clerks, et al.). When one comes, however, to the residue of crafts either unorganized or freshly in organization throes and yet without Schedules, "manner" or procedural method, i. e., exhaustion of negotiating effort on the property, is the same: the phrase remains, "handled in the usual manner", but the consequence of that antecedent becomes, "by the individual, his representative, or by [n. b., not a brotherhood 'general committee' but simply in the ordinary

sense:] committees of employees". The point, demonstrably clear, is that "manner" does not determine who, for the employes, shall "handle". And that origin and history has one further teaching: it shows the embryo of exclusive majority rule, in that only the majority representative, i. e., the "general committee" of the organized craft, could "handle", i. e., present and negotiate the individual grievance or claim within the scope of a Schedule; and General Order No. 65 left no vestige or shadow of doubt that it must be the general committee of "the organization with which the agreement was made", the one "which holds the agreement". Of course, that majority rule, created by the War Administration, ended on March 1, 1920, with the termination of Federal Control, and did not revive until the Congress in 1934 made majority rule statutory and exclusive.

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## CONCLUSION.

It is respectfully submitted that a writ of certiorari should be issued.

Dated, San Francisco, California,
March 17, 1943.

GEORGE M. NAUS,
*Attorney for Petitioner.*

CLARENCE E. WEISELL,
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**(Appendix Follows.)**

## Appendix

The Railway Labor Act of May 20, 1926, c. 347, 44 Stat. 577, as amended June 21, 1934, c. 691, 48 Stat. 1185, U.S.C., Tit. 45, §§ 151-163.

### Definitions.

Section 1. [45 U.S.C. § 151]. When used in this Act and for the purposes of this Act—

[Defines: First, "carrier". Second, "Adjustment Board". Third, "Mediation Board". Fourth, "commerce". Fifth, "employee". Sixth, "representative". Seventh, "district court"; "circuit court of appeals".]

### General Purposes.

Sec. 2. [45 U.S.C. § 151a.] The purposes of the Act are: (1) To avoid any interruption to commerce or to the operation of any carrier engaged therein; (2) to forbid any limitation upon freedom of association among employees or any denial, as a condition of employment or otherwise, of the right of employees to join a labor organization; (3) to provide for the complete independence of carriers and of employees in the matter of self-organization to carry out the purposes of this Act; (4) to provide for the prompt and orderly settlement of all disputes concerning rates of pay, rules, or working conditions; (5) to provide for the prompt and orderly settlement of all disputes growing out of grievances or out of the interpretation or application of agreements covering rates of pay, rules, or working conditions.

GENERAL DUTIES.

[45 U.S.C. § 152.] First. It shall be the duty of all carriers, their officers, agents, and employees to exert every reasonable effort to make and maintain agreements concerning rates of pay, rules, and working conditions, and to settle all disputes, whether arising out of the application of such agreements or otherwise, in order to avoid any interruption to commerce or to the operation of any carrier growing out of any dispute between the carrier and the employees thereof.

Second. All disputes between a carrier or carriers and its or their employees shall be considered, and, if possible, decided, with all expedition, in conference between representatives designated and authorized so to confer, respectively; by the carrier or carriers and by the employees thereof interested in the dispute.

Third. Representatives, for the purposes of this Act, shall be designated by the respective parties, without interference, influence, or coercion by either party over the designation of representatives by the other; and neither party shall in any way interfere with, influence, or coerce the other in its choice of representatives. Representatives of employees for the purposes of this Act need not be persons in the employ of the carrier, and no carrier shall, by interference, influence, or coercion seek in any manner to prevent the designation by its employees as their representatives of those who or which are not employees of the carrier.

Fourth. Employees shall have the right to organize and bargain collectively through representatives of their

own choosing. The majority of any craft or class of employees shall have the right to determine who shall be the representative of the craft or class for the purposes of this Act. No carrier, its officers or agents, shall deny or in any way question the right of its employees to join, organize, or assist in organizing the labor organization of their choice, and it shall be unlawful for any carrier to interfere in any way with the organization of its employees, or to use the funds of the carrier in maintaining or assisting or contributing to any labor organization, labor representative, or other agency of collective bargaining, or in performing any work therefor, or to influence or coerce employees in an effort to induce them to join or remain or not to join or remain members of any labor organization, or to deduct from the wages of employees any dues, fees, assessments, or other contributions payable to labor organizations, or to collect or to assist in the collection of any such dues, fees, assessments, or other contributions: Provided, That nothing in this Act shall be construed to prohibit a carrier from permitting an employee, individually, or local representatives of employees from conferring with management during working hours without loss of time, or to prohibit a carrier from furnishing free transportation to its employees while engaged in the business of a labor organization.

Fifth. * * *

Sixth. In case of a dispute between a carrier or carriers and its or their employees, arising out of grievances or out of the interpretation or application of agreements

concerning rates of pay, rules, or working conditions, it shall be the duty of the designated representative or representatives of such carrier or carriers and of such employees, within ten days after the receipt of notice of a desire on the part of either party to confer in respect to such dispute, to specify a time and place at which such conference shall be held: Provided, (1) That the place so specified shall be situated upon the line of the carrier involved or as otherwise mutually agreed upon; and (2) that the time so specified shall allow the designated conferees reasonable opportunity to reach such place of conference, but shall not exceed twenty days from the receipt of such notice: And provided further, That nothing in this Act shall be construed to supersede the provisions of any agreement (as to conferences) then in effect between the parties.

Seventh. No carrier, its officers or agents shall change the rates of pay, rules, or working conditions of its employees, as a class as embodied in agreements except in the manner prescribed in such agreements or in section 6 of this Act.

Eighth. Every carrier shall notify its employees by printed notices in such form and posted at such times and places as shall be specified by the Mediation Board that all disputes between the carrier and its employees will be handled in accordance with the requirements of this Act, and in such notices there shall be printed verbatim, in large type, the third, fourth, and fifth paragraphs of this section. The provisions of said paragraphs are hereby made a part of the contract of employment

between the carrier and each employee, and shall be held binding upon the parties, regardless of any other express or implied agreements between them.

Ninth. • • •

NATIONAL BOARD OF ADJUSTMENT
GRIEVANCES—INTERPRETATION OF AGREEMENTS.

SEC. 3. [45 U.S.C. § 153.] • • •

First. There is hereby established a Board, to be known as the "National Railroad Adjustment Board", • • • and it is hereby provided—

(a) That the said Adjustment Board shall consist of thirty-six members, eighteen of whom shall be selected by the carriers and eighteen by such labor organizations of the employees, national in scope, as have been or may be organized in accordance with the provisions of section 2 of this Act. • • •

(h) The said Adjustment Board shall be composed of four divisions, whose proceedings shall be independent of one another, and the said divisions as well as the number of their members shall be as follows:

First division: To have jurisdiction over disputes involving train- and yard-service employees of carriers; that is engineers, firemen, hostlers, and outside hostler helpers, conductors, trainmen, and yard-service employees. This division shall consist of ten members, five of whom shall be selected and designated by the carriers and five of whom shall be selected and designated by the national labor organizations of the employees. • • •

(i) The disputes between an employee or group of employees and a carrier or carriers growing out of grievances or out of the interpretation or application of agreements concerning rates of pay, rules, or working conditions, including cases pending and unadjusted on the date of approval of this Act, shall be handled in the usual manner up to and including the chief operating officer of the carrier designated to handle such disputes; but, failing to reach an adjustment in this manner, the disputes may be referred by petition of the parties or by either party to the appropriate division of the Adjustment Board with a full statement of the facts and all supporting data bearing upon the disputes.

(j) Parties may be heard either in person, by counsel, or by other representatives, as they may respectively elect, and the several divisions of the Adjustment Board shall give due notice of all hearings to the employee or employees and the carrier or carriers involved in any disputes submitted to them. * * *

(o) In case of an award by any division of the Adjustment Board in favor of petitioner, the division of the Board shall make an order, directed to the carrier, to make the award effective and, if the award includes a requirement for the payment of money, to pay to the employee the sum to which he is entitled under the award on or before a day named.

(p) If a carrier does not comply with an order of a division of the Adjustment Board within the time limit in such order, the petitioner, or any person for whose benefit such order was made, may file in the District

Court of the United States for the district in which he resides or in which is located the principal operating office of the carrier, or through which the carrier operates, a petition setting forth briefly the causes for which he claims relief, and the order of the division of the Adjustment Board in the premises. • • •

NATIONAL MEDIATION BOARD.

SEC. 4. [45 U.S.C. § 154.]

FUNCTIONS OF THE MEDIATION BOARD.

SEC. 5. [45 U.S.C. § 155.]

SEC. 6. [45 U.S.C. § 156.]

ARBITRATION.

SEC. 7. [45 U.S.C. § 157.]

EMERGENCY BOARD.

SEC. 10. [45 U.S.C. § 160.]

GENERAL PROVISIONS.

SEC. 11. [45 U.S.C. § 161.]

SEC. 12. [45 U.S.C. § 162.]

SEC. 13. [Amends Judicial Code, § 128(b), and the Act of February 13, 1925.]

SEC. 14. [45 U.S.C. § 163.] [Repeals prior legislation.]